

STATE OF MICHIGAN
COURT OF APPEALS

LISBETH WITTENBERG,

Plaintiff-Appellant,

v

RICHARD LOBENHERZ,

Defendant-Appellee.

UNPUBLISHED

March 30, 2006

No. 266290

Charlevoix Circuit Court

LC No. 04-041920-NO

Before: Neff, P.J., and Saad and Bandstra, JJ.

MEMORANDUM.

Plaintiff appeals as of right the trial court order granting summary disposition in favor of defendant. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

We review de novo a trial court's ruling on a motion for summary disposition. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. *Id.* In ruling on such a motion, the trial court must consider the pleadings, depositions, affidavits, admissions, and other documentary evidence submitted in a light most favorable to the nonmoving party in deciding whether a genuine issue of material fact exists. *Id.* All reasonable inferences are resolved in favor of the nonmoving party. *Id.* Summary disposition is appropriate if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

Plaintiff leased a house from defendant for a one-year term. She was injured when a rotted board in a cover to an access hole gave way. Pursuant to MCL 554.139(1)(b), defendant had a statutory duty to keep the premises in reasonable repair, but that duty was subject to modification by mutual agreement of the parties. MCL 554.139(2). Here, the parties reached such an agreement: the lease provided that plaintiff was "responsible for any and all repairs or maintenance" of the premises.

Even absent a transfer of responsibility for repairs to the tenant, defendant's duty under the statute was to repair all defects of which he knew or should have known. *Raatikka v Jones*, 81 Mich App 428, 430; 265 NW2d 360 (1978). He did not have a duty "to inspect the premises on a regular basis to determine if any defects exist[ed]," but rather was required to "repair any defects brought to his attention by the tenant or by his casual inspection of the premises." *Id.* at

431. Plaintiff presented no evidence to show that the defective condition was known to defendant or that defendant had information from which he could infer that the condition existed, or that the defect was readily apparent upon casual inspection. Therefore, the trial court did not err in granting summary disposition in favor of defendant.

We affirm.

/s/ Janet T. Neff

/s/ Henry William Saad

/s/ Richard A. Bandstra